IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

Crl.Rev.Pet.No. 4075 of 2006(D)

AGAINST THE ORDER DATED 23/08/2006 IN IN O.R.5/05 IN CMP.1329/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, ADIMALI

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REVN. PETITIONER:

JOSE, AGED 33 YEARS,
S/O. JOSEPH, VALIYAVEETTIL HOUSE,CHELLARKOVIL KARA
CHAKKUPALLI VILLAGE, UDUMPAMCHOLA TALUK, IDUKKI.

BY ADV. SRI.SHAIJAN C.GEORGE

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. DIVISIONAL FOREST OFFICER, MUNNAR.

3. DEPUTY RANGE OFFICER,
MACHIPLAVU FOREST STATION, IDUKKI.

BY PUBLIC PROSECUTOR (SRI. C.K. SURESH)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

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Crl.R.P. No.4075 of 2006

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Dated this 14th day of December, 2006.

ORDER

A petition was filed by the revision petitioner under section 457 of the Code of Criminal Procedure ('the Code' for short) for interim custody of the vehicle bearing No.KL-6-6453 involved in a forest case. According to petitioner, on the allegation that the vehicle was used for transporting forest produce involved in O.R.No.5 /05, vehicle belonging to the petitioner was seized by forest officials. A petition as therefore filed for getting custody of vehicle under section 457 of the Code. The respondents resisted the move and contended petitioner's vehicle involved in other forest offences.

2. Learned Public Prosecutor submitted that the vehicle has been used for forest offences and it will not be proper to release the vehicle to the petitioner, in the interest of justice. It is also pointed out that it is likely that the vehicle will be used again for forest offence, as revealed from the conduct of the revision petitioner and hence the vehicle may not be released to the petitioner.

3. Learned counsel appearing for the petitioner submitted that there is nothing barring the criminal court from releasing the vehicle to the owner of

the vehicle pending enquiry, especially when investigation is pending in respect of a forest offence. Even though the vehicle is not produced before the court, the petitioner can maintain petition under suction 457 of the Code, it is contended.

4. Learned Public Prosecutor submitted that confiscation proceedings has been initiated under section 61(A) of the Kerala Forest Act and it will be completed shortly. The lower court found that during the pendency of the confiscations proceedings under section 61(A) of the Kerala Forest Act, the authorised officer has got power to release the vehicle seized pending finalisation of the confiscation proceedings in the light of the decision reported in 1996 (2) KLT 984. The Supreme Court held that in such cases the party can approach the authorized officer for interim custody of the vehicle pending finalisation of the confiscation proceedings. Learned Public Prosecutor also submitted that if the petitioner approaches the authorized officer for interim custody of vehicle by filing a petition, it will be disposed of in accordance with law.

5. On going through the order under challenge, I do not find any reason to interfere with the order. There is no illegality or impropriety in the order. The petitioner's doors are not shut and he can approach the appropriate authority which has the power to grant interim custody of the vehicle. The proper course to be adopted will therefore be to leave the matter to the authority concerned, under the Kerala Forest Act to deal with the issue. Learned counsel for the revision petitioner, however, expressed

an apprehension that if this revision is dismissed, the authorized officials will not release the vehicle to the revision petitioner.

6. In such circumstances, I make it clear that the disposal of this petition will not stand in the way of the authorized officer from considering the question on merit whether the vehicle should be released to petitioner or not, untrammelled by any of the observations, if any, made in this judgment on merit. If the petitioner has a case that he is entitled to get the vehicle released and for interim custody, it is left to him to approach the appropriate authority.

This petition is dismissed, giving liberty to the petitioner to approach appropriate authority, for interim custody of the vehicle.

K. HEMA, JUDGE.

Krs.